TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. ~~459~~ 147.

ORLANDO F. BACON, PLAINTIFF IN ERROR,

vs.

PAUL H. WALKER, CHARLES H. WALKER, EUGENE WALKER, AND GILBERT WALKER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IDAHO.

FILED NOVEMBER 13, 1905.

(19,961.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 24, 1906.

1 Filed Oct. 10th, 1905. Sol Hasbrouck, Clerk.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Supreme Court of the State of Idaho:

Because, in the records and proceedings, as also the rendition of a judgment in a plea which is in the said Supreme Court of Idaho before you at the June sitting of the May term 1905, thereof, between Paul H. Walker, Charles H. Walker, Eugene Walker and Gilbert Walker, plaintiffs and respondents *vs.* Orlando F. Bacon, defendant and appellant, a manifest error has happened to the great damage of the said defendant Orlando F. Bacon as by his complaint appears:

We being willing that error, if any has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Supreme Court, together with this writ, so that you have the said record and proceedings aforesaid, at the City of Washington, D. C., and filed in the office of the Clerk of the United States Supreme Court on or before sixty days from the date hereof, to the end that the record and proceedings aforesaid being inspected, the United States Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice
2 of the Supreme Court of the United States, this tenth day of October, 1905.

Done in the City of Boise with the seal of the Circuit Court of the United States for the District of Idaho attached.

[Seal United States Circuit Court, Idaho.]

A. L. RICHARDSON,
Clerk Circuit Court United States,
District of Idaho, Central Division.

Allowed:

CHAS. O. STOCKSLAGER,
Chief Justice of the Supreme Court
of the State of Idaho.

3 *Return to Writ.*

UNITED STATES OF AMERICA, *Supreme Court of Idaho, ss:*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In Witness whereof, I hereunto subscribe my name and affix the seal of said Supreme Court, in the City of Boise, this 27th day of October, 1905.

SOL HASBROUCK,
Clerk of the Supreme Court of the State of Idaho.

Costs of Suit.

Plaintiffs' costs, $8.50, paid by Paul H. Walker.
Defendant's costs, $1.25, paid by O. F. Bacon.
Costs of transcript, $17.75, paid by Orlando F. Bacon.

[Seal of Supreme Court, State of Idaho.]

SOL HASBROUCK,
Clerk of the Supreme Court, Idaho.

4 No. —.

In the Supreme Court of the State of Idaho, May Term, 1905.

PAUL H. WALKER, CHARLES H. WALKER, EUGENE WALKER and GILBERT WALKER, Respondents,
vs.
O. F. BACON, Appellant.

Transcript.

On Appeal from the District Court of the Fourth Judicial District of the State of Idaho in and for Elmore County

Wyman & Wyman, Attorneys for Appellant.
W. C. Howie, Attorney for Respondents.

Filed —— —, 1905.

—— ——, *Clerk.*

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6 *Complaint.*

In Justice Court of Little Camas Precinct, Elmore County, State of Idaho.

PAUL H. WALKER, CHARLES H. WALKER, EUGENE WALKER and GILBERT WALKER, Plaintiffs,
vs.
O. F. BACON, Defendant.

Plaintiffs in the above entitled cause, for cause of action against defendant in said cause allege:

That plaintiffs are the owners of and in the possession of the following described lands situated in Elmore County, State of Idaho, to wit: The northeast quarter of the northeast quarter of section seventeen and the east half of the southeast quarter and the southeast quarter of the northeast quarter of section eight, in township two south, range eleven east, Boise Meridian, and of a dwelling house thereon in which said plaintiffs reside.

That plaintiffs have a large number of horses and cattle and that it is necessary for plaintiffs to keep a large number of said horses and cattle at and in the vicinity of said lands and said dwelling house and for that purpose it is necessary for plaintiffs to have the grass that grows near and in the vicinity of said dwelling house and that there is not sufficient pasturage for said horses and cattle so needed by plaintiffs on the said lands belonging to said plaintiffs and that plaintiffs need to pasture said horses and cattle on the public lands in the vicinity of said dwelling house.

That defendant is the owner of a large number of sheep,
7 towit, about three thousand head, the exact number being to plaintiffs unknown, and that on the 21st to the 25th days of May, inclusive, 1904, said defendant caused said sheep to be herded and permitted them to graze within two miles of said dwelling house of plaintiffs and on the lands on which it is necessary for plaintiffs to pasture their said cattle and horses, and that plaintiffs are thereby damaged in the sum one hundred dollars.

Wherefore, plaintiffs demand judgment against defendant for the sum of one hundred dollars and for costs of this suit.

W. C. HOWIE,
Attorney for Plaintiffs.

Filed in the Justice's Court May 26, 1904.
Filed in the District Court June 21, 1904.

Demurrer.

(Title of Court and Cause.)

Comes now the defendant above named and to plaintiffs' complaint demurs on the following grounds, to wit:

I.

That the said complaint does not state facts sufficient to constitute a cause of action.

II.

That said complaint does not state any cause of action other than a violaiton of Section- 1210 and 1211 of the Reversed Statutes of the State of Idaho and said sections are in violation of Article XIV of the Amendments of the Constitution of the United States in that their effect is to deprive this defendant of his property without due process of law and that they deny to defendant the equal protection of the laws.

Wherefore defendant prays that he may not be required to plead further to said complaint but that he recover his costs.

WYMAN & WYMAN,
Defendant's Attorneys.

Filed in the Justice's Court May 31, 1904.
Filed in the District Court June 21, 1904.

Answer.

(Title of Court and Cause.)

Comes now the defendant above named and to plaintiffs' complaint makes answer as follows:

I.

Denies each and every allegation in said complaint contained.

Wherefore having answered said complaint prays that he have judgment for his costs.

WYMAN & WYMAN,
Defendant's Attorneys.

Filed in Justice's Court May 31, 1904.
Filed in District Court June 21, 1904.

Judgment in Justice Court.

(Title of Court and Cause.)

MAY 31, 1904.

This cause came on to be heard on the defendant's demur-. After due consideration it is hereby ordered that the demurrer be overruled.

Thereupon defendant filed answer, in writing, to plain-
9 tiffs' compalnt, — the cause *thereon* for trial.

The following witnesses were duly called, sworn and examined on the part of the p-aintiffs:

Charles H. Walker, Wm. E. Wilson, Ed Trumbal, Pete Turner, Joe Serpa, Joe Williams, W. H. Blackman, John Johnson.

The plaintiffs rested.

The defendant introduced no evidence and the case was closed.

After argument, the Court being fully advised in the premises it was ordered that judgment be ordered for plaintiffs as prayed for in their complaint.

Wherefore, it is ordered, adjudged and decreed that plaintiffs have judgment against defendant for the sum of one hundred dollars and their costs, taxed at sixty-seven dollars and thirty cents.

SOLON McCOY,
Justice of the Peace.

Amended Answer.

(Title of Court and Cause.)

Comes now the defendant in the above entitled action and to plaintiffs' complaint makes this his amended answer as follows:

I.

That said complaint does not state any cause of action other than a violation of Sections 1210 and 1211 of the Revised Statutes of the State of Idaho and said sections are in violation of Article XIV of the Amendments of the Constitution of the United States in that their effect is to deprive this defendant of his property with-
10 out due process of law and that they deny to defendant the equal protection of the laws; and this defendant hereby claims the protection of and the immunity granted by said Constitution and amendments thereto.

Wherefore defendant prays that he may have judgment for his costs.

WYMAN & WYMAN,
Defendant's Attorneys.

Service hereof admitted *the* November 1, 1904.

W. C. HOWIE,
Attorney for Plaintiffs.

Filed November 1, 1904.

Minutes of the Court.

Civil No. 9.

Seventh Judicial Day of the Fourth Judicial District Court of the State of Idaho in and for Elmore County.

PAUL H. WALKER, Plaintiff,
vs.
O. F. BACON, Defendant.

MOUNTAIN HOME, IDAHO, *Nov.* 1, 1904.

This cause came on to be heard on defendant's demurrer, W. C. Howie appearing as attorney for plaintiff and against said demurrer, Wyman & Wyman appearing for defendant and for said demurrer. After argument by counsel, the Court being fully advised in the premises, it was ordered that said demurrer be overruled. Defendant then asked and was granted leave to file an amended answer. Defendant filed an amended answer under the order of the Court. The cause then came on for trial before the Court without a jury, a jury having been expressly waived. Plaintiff moved for judgment upon the pleadings, and argument by respective counsel. The Court being fully advised in the premises said motion was by the Court sustained, to which defendant duly excepted, whereupon the Court ordered judgment to be entered according to the prayer of plaintiff's complaint.

Judgment.

(Title of Court and Cause.)

This cause came on regularly for trial on the 1st day of November, 1904, on the complaint of plaintiffs, and defendant's amended answer thereto, W. C. Howie appearing for plaintiffs and Wyman & Wyman appearing for defendants. Plaintiffs, by their attorney, moved the Court for judgment for plaintiffs as prayed for in their complaint, upon the pleadings. After argument by the respective counsel, the Court being fully advised in the premises, said motion was sustained.

Wherefore, by virtue of the law, and by reason of the premises aforesaid, it is ordered, adjudged and decreed that said plaintiffs have and recover of said defendant the sum of one hundred dollars,

together with said plaintiffs' costs and disbursements in this action, taxed at one hundred and thirteen and 10-100 dollars.

12 Dated this 3d day of November, 1904.

LYTTLETON PRICE,
District Judge.

Filed November 3, 1904.
Entered, etc., Nov. 3, 1904.

Notice of Appeal.

(Title of Court and Cause.)

To the Plaintiffs Above Named and to W. C. Howie, Their Attorney:

You will please take notice that the defendant in the above entitled action hereby appeals to the Supreme Court of the State of Idaho from the judgment made in said cause and entered on November 23, 1904, in favor of plaintiffs and against the said defendant and from the whole thereof.

Dated this 10th day of January, 1905.

WYMAN & WYMAN,
Defendant's Attorneys.

Service of the foregoing notice acknowledged this 11th day of January, 1905.

W. C. HOWIE,
Plaintiffs' Attorney.

Filed January 11, 1905.

Attorneys' Certificate.

It is hereby stipulated by the undersigned, the attorneys of record for the respective parties hereto, that the foregoing transcript is correct, that it contains the judgment roll in the said action and

13 that a good and sufficient undertaking in due form on appeal from the judgment entered November 23rd, 1904, was filed herein on January 13, 1905.

(Signed) WYMAN & WYMAN,
Appellant's Attorneys.
W. C. HOWIE,
Respondents' Attorney.

14 Filed June 10, 1905. Sol Hasbrouck, Clerk.

In the Supreme Court of the State of Idaho.

PAUL H. WALKER ET AL., Plaintiff- and Respondent-,
vs.
O. F. BACON, Defendant and Appellant.

Comes now the appellant herein, and moves the Court for a rehearing in the above entitled case. This motion is based upon the following grounds, to-wit:

There is involved in this appeal but one question: That is the constitutionality of Sections 1210 and 1211 of the Revised Statutes of the State of Idaho. The Appellant by his demurrer and answer to the complaint and at all other times has claimed that the law in question is in conflict with and repugnant to the amendments to the Federal Constitution in that it denies to him the equal protection of the law and deprives him of his property without due process of law; he claims and has always claimed in this action that he is not liable under the facts set out in the complaint by reason of the guaranties in the clauses of the Federal Constitution which are above referred to.

These questions were submitted to your Honors upon the hearing on this appeal and were the only ones presented for your
15 Honors' consideration and by the decision and judgment of this Court the Appellant herein is denied the claim so made.

We have nothing to add by way of argument or citation to the brief we have filed, but desire in this formal manner to call to the attention of the Court the fact that Appellant in this case and in this Court and at all other times in this cause has claimed and does now claim the protection of the clauses in the amendments to the Federal Constitution herein referred to and that the decision of the Court has been to deny him this claim: and that there is in this action and upon this appeal drawn in question the validity of certain of the statutes of the State of Idaho herein referred to on the ground that they are repugnant to the Constitution of the United States and the amendments thereof and that the decision of this Court in this case and upon this appeal is in favor of their validity.

We therefore ask that your Honors grant herein a re-hearing.

Respectfully submitted.

WYMAN & WYMAN,
Attorneys for Appellant and Petitioner.

16 BOISE, IDAHO, *May* 25th, 1905.

SUPREME COURT, *State of Idaho, ss:*

Court met pursuant to adjournment—Present: Hon. Charles O. Sctokslager, Chief Justice; Hon. James F. Ailshie, Justice; Hon. Isaac N. Sullivan, Justice, and the officers of the court—when the following among other proceedings were had, to-wit:

1057.

PAUL H. WALKER ET AL., Respondents,
vs.
O. F. BACON, Appellant.

This cause having been set for hearing on this day the same was called. Frank T. Wyman appeared for the appellant and W. C. Howie for the respondents. After argument the cause was submitted and by the court ordered under advisement.

On the 1st day of June, 1905, the following entry appears of record: After entitling the cause:

This cause having been heretofore heard, submitted and taken under advisement by the court, and the court having fully considered the same, now on this day the cause was again called and the decision of the court is delivered by Justice Sullivan to the effect that the judgment of the court below be affirmed.

It is therefore considered, adjudged and decreed by the court that the judgment of the district court of the Fourth Judicaial District in and for the County of Elmore in the above entitled cause, be and the same hereby is affirmed. Costs of this appeal are awarded to respondents.

On June 21st, the following record entry is made, to-wit:

17 The appellant in this case having heretofore filed a petition for a rehearing of this case, and the court having fully considered the same, now on this day the decision of the court is delivered by Justice Ailshie to the effect that the petition be denied.

It is therefore considered, adjudged and decreed by the court that appellant's petition for a rehearing of the above entitled cause be, and the same hereby is, denied.

18 Filed June 1st, 1905. Sol Hasbrouck, Clerk.

In the Supreme Court of the State of Idaho, May Term, 1905.

PAUL H. WALKER ET AL., Respondents,
vs.
O. F. BACON, Appellant.

Two Mile Limit Law—Sections 1210 and 1211, Revised Statutes.—1. A judgment duly and regularly rendered and entered under the provisions of Sections 1210 and 1211 of the Revises Statutes of 1887, known as the two-mile limit law, affirmed under previous decisons of this court.

Stockslager, C. J., dissenting.

Appeal from the District Court of Elmore County; Hon. Lyttleton Price, Judge.

Action to recover damages under what is known as the two-mile limit law. Judgment for plaintiff. Affirmed.

Wyman & Wyman for appellant.
W. C. Howie for respondent.

19 SULLIVAN, *J.:*

This is an action brought to recover damages for herding and grazing sheep within two miles of the dwelling of the plaintiff under the provisions of Sections 1210 and 1211 of the Revised Statutes.

To the complaint the defendant interposed an answer not denying any of the allegations of the complaint, but set up as a defense the unconstitutionality of the provisions of said sections. Counsel for the respondent thereupon moved for judgment on the pleadings, which motion was granted by the court and judgment was entered against the appellant for the sum of $100.00 and costs of suit from which judgment this appeal is taken.

This appeal involves the constitutionality of the provisions of said sections of our Revised Statutes, and on the decisions of this court in the cases of Sifers *v.* Johnson, 7 Idaho, 798; Sweet *v.* Ballentyne, 8 Idaho, 431; Walling *v.* Bown *et al.*, 72 Pac. 960; Phipps *v.* Grover, 75 Pac. 64; Walling *v.* Bown, 76 Pac. 318 and Spencer *v.* Morgan, 79 Pac. 459, the judgment of the court must be affirmed, and it is so ordered. The costs of this appeal are awarded to the respondents.

Ailshie, J., concurs.

Stockslager, C. J., dissents.

20 Filed June 21, 1905. —— ——, Clerk.

In the Supreme Court of the State of Idaho.

PAUL H. WALKER ET AL., Respondents,

vs.

O. F. BACON, Appellant.

(On Petition for Rehearing, June 20, 1905.)

AILSHIE, *J.:*

The petition for a rehearing in this case does not present any matter not heretofore considered by the court. The position of this court on the questions presented is well defined by the numerous opinions in the various cases heretofore cited in this case. The petition is denied.

Sullivan, J., concurs.

Stockslager, C. J., dissents.

21 In the Supreme Court of the State of Idaho.

ORLANDO F. BACON, plaintiff in Error,

vs.

PAUL H. WALKER, CHARLES H. WALKER, EUGENE WALKER and GILBERT WALKER, Defendants in Error.

Petition for Writ of Error.

Filed Oct. 9th, 1905. Sol Hasbrouck, —.

Your petitioner, Orlando F. Bacon, hereby sets forth that on or about the 21st day of June, 1905, the Supreme Court of the State of Idaho made and entered a final decision and judgment therein in favor of the defendants in error and against Orlando F. Bacon,

plaintiff in error, in which final decision and judgment and the proceedings had prior thereto in said cause, certain errors were committed to the prejudice of said Orlando F. Bacon, plaintiff in error, all of which will more in detail appear from the assignment of errors, herewith presented, and which is filed with this petition.

That the said Supreme Court of the State of Idaho is the highest court of the state of Idaho in which a decision in this action could be had.

Wherefore, Orlando F. Bacon, plaintiff in error, petitions and prays for a Writ of Error from the said decision and judg-
22 ment to the Supreme Court of the United States for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Dated, Boise, Idaho, October 4th, 1905.

W. E. BORAH,
HARRY C. WYMAN,
FRANK T. WYMAN
Boise, Idaho, Attorneys Plaintiff in Error.

STATE OF IDAHO, *Supreme Court, ss:*

Let the Writ of Error issue upon the execution of a bond by the said Orlando F. Bacon in the sum of Five hundred Dollars. Said bond when approved to act as a supersedeas.

Dated October 9th, 1905.

CHAS. O. STOCKSLAGER,
Chief Justice of the Supreme Court of the State of Idaho.

23 In the Supreme Court of the State of Idaho.

ORLANDO F. BACON, Plaintiff in Error,
vs.
PAUL H. WALKER, CHARLES H. WALKER, EUGENE WALKER and GILBERT WALKER, Defendants in Error.

Assignment of Errors.

Filed Oct. 9, 1905. Sol. Hasbrouck, Clerk.

Comes now the above named plaintiff in error and files herewith his petition for a writ of error and says there are errors in the records and proceedings of the above entitled cause and for the purpose of having the same reviewed in the Supreme Court of the United States, makes the following assignment:

1. That the Supreme Court of the State of Idaho in its decision and judgment erred in affirming the judgment of the court below for the reason that the statutes of the State of Idaho upon which the cause of action herein is based, being Sections 1210 and 1211 of the Revised Statutes of the State of Idaho, are each of them invalid

and unconstitutional and in violation of Article XIV of the amendments of the Constitution of the United States in that the said statutes do and each of them does deprive this plaintiff in error of his property without due process of law.

2. That the Supreme Court of the State of Idaho in its decision and judgment in the above entitled cause erred in affirming the judgment of the court below for the reason that the statutes of the state of Idaho upon which the cause of action herein is based, being Sections 1210 and 1211 of the Revised Statutes of the State of Idaho, are each of them invalid and unconstitutional and in violation of Article 14 of the Amendments of the Constitution of the United States and that said statutes do and each of them does deny this plaintiff in error the equal protection of the law.

3. The Supreme Court of the State of Idaho erred in holding and deciding that said Sections 1210 and 1211 do not abridge the privileges and immunities of citizens or of this plaintiff in error as guaranteed by the 14th amendment of the Federal Constitution.

24 4. That in deciding said cause and rendering said judgment there was drawn in question the constitution of the United States and the same was necessarily involved in the decision, and the Supreme Court of the State of Idaho would not have rendered its decision nor given judgment without deciding the same against the claim and right under said constitution specially set up by this plaintiff in error.

5. The Supreme Court of the State of Idaho erred in holding and deciding that the defendants in error were entitled to recover as damages or as a penalty the value of the grasses growing upon the public domain within two miles of their dwelling houses eaten and destroyed by the sheep of the plaintiff in error and that thereby plaintiff in error was not and is not deprived of property without due process of law or denied the equal protection of the law as provided by the constitution of the United States.

6. The Supreme Court of the State of Idaho erred in holding and deciding that said Sections 1210 and 1211 do not unlawfully discriminate between those engaged in grazing sheep on public domain and those engaged in grazing other stock on said public lands.

Wherefore, Orlando F. Bacon, plaintiff in error, prays that the judgment of said Supreme Court of the State of Idaho be reversed and said court be ordered to cause said action to be dismissed, and for such other relief as this plaintiff in error may be entitled to, and for costs.

W. E. BORAH,
HARRY C. WYMAN,
FRANK T. WYMAN,
Attorneys for Plaintiff in Error, Boise, Idaho.

25 In the Supreme Court of the State of Idaho.

ORLANDO F. BACON, Plaintiff in Error,
vs.
PAUL H. WALKER, CHARLES H. WALKER, EUGENE WALKER and GILBERT WALKER, Defendants in Error.

Bond.

Filed Oct. 9, 1905. Sol Hasbrouck, Clerk.

Know all men by these presents, That we Orlando F. Bacon as principal and J. C. Pence and W. C. Cleveland as surcties are held and firmly bound unto Paul H. Walker, Charles H. Walker, Eugene Walker and Gilbert Walker in the sum of Five Hundred Dollars to be paid to the said Paul H. Walker, Charles H. Walker, Eugene Walker and Gilbert Walker, to which payment well and truly to be made, we bind ourselves jointly and severally firmly by these presents.

Sealed with our seals and dated this 4th day of October, 1905.

Whereas, the above named plaintiff in error seeks to prosecute his writ of error to the Supreme Court of the United States to reverse the decision and judgment rendered in the above entitled action by the Supreme Court of the State of Idaho.

Now, therefore, the condition of this obligation is such that if the above named plaintiff in error shall prosecute said writ of error to effect, and answer all costs and damages that may be adjudged if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and effect.

ORLANDO F. BACON,
Principal.
J. C. PENCE,
W. C. CLEVELAND,
Sureties.

STATE OF IDAHO, *County of Ada, ss:*

J. C. Pence and W. C. Cleveland, being each duly sworn, depose and say we are each of lawful age and are citizens of the state of Idaho, and know the contents of the foregoing instrument
26 to which we have attached our names. We each for himself, say we are worth the sum of Five Hundred Dollars over and above all debts, liabilities and exemptions.

J. C. PENCE.
W. C. CLEVELAND.

Subscribed and sworn to before me this 4th day of October, 1905.
[SEAL.] HARRY C. WYMAN,
Notary Public.

The above bond is approved this 9th day of October, 1905.
CHAS. O. STOCKSLAGER,
Chief Justice of the Supreme Court of the State of Idaho.

27 Filed Oct. 13, 1905. Sol Hasbrouck, Clerk.

UNITED STATES OF AMERICA, ss:

The President of the United States to Paul H. Walker, Charles H. Walker, Eugene Walker and Gilbert Walker, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within sixty days after the date hereof pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Idaho wherein Orlando F. Bacon is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said Writ of Error mentioned should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of the State of Idaho this 13th day of October, 1905.

CHAS. O. STOCKSLAGER,
Chief Justice of the Supreme Court of the State of Idaho.

Attest:
SOL HASBROUCK,
Clerk of the Supreme Court.

Mountainhome, Idaho, October 25th, 1905.

28 The undersigned, attorney for the defendants in error in the above entitled cause, hereby acknowledges due service of the above citation, and enters an appearance in the Supreme Court of the United States.

W. C. HOWIE,
Attorney for Paul H. Walker, Charles H. Walker, Eugene Walker and Gilbert Walker, of Record in the Supreme Court of the State of Idaho.

29 In the Supreme Court of the State of Idaho.

Certificate of Clerk.

ORLANDO F. BACON, Plaintiff in Error,
vs.
PAUL H. WALKER, CHARLES H. WALKER, EUGENE WALKER, AND GILBERT WALKER, Defendants in Error.

I, Sol Hasbrouck, Clerk of the Supreme Court of the State of Idaho, do hereby certify the foregoing transcript to be a full, true and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court and that the same constitute the return to the annexed writ of error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court this 27th day of October, A. D., 1905.

[Seal of Supreme Court, State of Idaho.]

SOL HASBROUCK,
Clerk of the Supreme Court, State of Idaho.

Endorsed on cover: File No. 19,961. Idaho supreme court. Term No. 459. Orlando F. Bacon, plaintiff in error, vs. Paul H. Walker, Charles H. Walker, Eugene Walker and Gilbert Walker. Filed November 13th, 1905. File No. 19,961.